
PROHIBITIONS AS A MODERN MEANS OF LEGAL LIMITATION OF STATE POWER

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SUMMARY

The problem of limiting state power is one of the most relevant studies of modern jurisprudence. In particular, modern jurists consider prohibitions as a special legal mechanism for limiting state power. The article also presents the essence of the concept of “legal restriction”. Moreover, based on the study of the opinions of famous legal scholars, international and domestic legislation, types of legal prohibitions are presented. Especially, in the article, the author thoroughly reveals the characteristic features of direct and indirect prohibitions, which have a special impact on legal relations existing in the state. Furthermore, in this article the author emphasizes the role of prohibitions in the context of the relationship between the state and the individual.

Keywords: direct and indirect prohibitions, constitutional prohibitions, acts, restriction of state power, state, person, Constitution, rights and freedoms.

In modern legal literature, a “legal prohibition” is considered as a special means or method of limiting public power, and there is no single approach to the essence and specifics of its content. It is known that prohibition is one of the oldest means of legal regulation. Moreover law, at the initial stage of its development consisted entirely of prohibitions. In modern conditions, prohibitive legal regulations also do not lose their significance, acting as one of the main components of protective mechanisms. In its turn, the concept of “legal limitation” is determined as a legal deterrence of an illegal act, creating conditions for satisfying the interests of the counter-subject and public interests

Furthermore, these are limits established by law under which the subject must act and those limits exclude certain possibilities in a person's activities¹.

It should be noted, that due to the characteristics of the legal act, legal boundaries (restrictions) have certain features, in which many other social regulators are expressed implicitly².

The conducted research shows, that many well-known jurists (F. N. Fatkulin, A. V. Malkon, S. N. Semenyuta, R. Mouvr) consider two main ways of regulating public relations: prohibition and permission³. Another group of lawyers (S. S. Alekseev, A. G. Bratko, N. N. Ribushkin) consider "restrictions" as an independent mechanism for regulating public relations⁴.

It has been repeatedly noted in legal literature, that legal prohibitions, which at first glance seem to be a means of manifestation of tyranny, are, in fact, a very important factor in the establishment of a democratic state and in the regulation of society. As a matter of fact, legal prohibitions are means of implementation of exercising freedom of behavior⁵.

H. Qocharyan and M. Muradyan rightly pointed out, that in the conditions of democracy, the exercise of power is established, legitimized (legitimized) and controlled by the people, that is, by the citizens of the state. Democracy takes the form of self-determination and self-government of the people, in which all citizens can participate on an equal basis⁶. In addition, legal prohibitions, being enshrined in the legislative system, contribute to the establishment of legality in the state. Moreover, legal prohibitions, being enshrined in the legislative system, contribute to the establishment of legality in the state. According to O.S. Ioffey, S.S. Alekseev, V.N. Kudryavtsev, A.M. Yakovlev, legal prohibitions, being an integral element of the legal order, strengthen social relations, determine the most important aspects of state and civil discipline, determine the

¹**Kazanchian L., Zaqaryan A.**, Some features of the legal regime in the context of limitations of state power// "Bulwark of the law" Scientific-methodical journal, Yerevan, №17, 2024, p.227-236; **Kazanchian L., Zaqaryan A.**, Human Rights and Freedoms as a Means of Legal Limitation of State Power// "Region and the world", scientific-analytical journal. Vol. XIV, № 4 (47), 2023, p.22-28; **Malko A.V.** Incentives and restrictions in law. 2nd ed., M., Jurist. 2003, p.85.

²**Zaqaryan A., Safaryan G.** Historical stages in the formation of the idea of limiting power// "Katchar" Scientific periodical, Yerevan, №2, 2023, pp.14-24.

³ **Faktulin F. N.** Problems of the theory of the state and law: a course of lectures. Kazan, Pub. House of Kazan University, 1987, p.295-300 (In Russ.); **Malko A.V.** Incentives and restrictions in law. M., Yurist, 2003. p.84-85; **Semenyuta N.N.** Prohibitions and Limitations in Legal Regulation of Labour Relations in the RF. Candidate of Juridical Sciences Thesis. Omsk, 2000, p. 94-95 (In Russ.); **Moore R.** Legal Permission// Archives for Philosophy of Law and Social Philosophy, 1973, №59(3), p. 327-346.

⁴ **Alekseev S.S.** Legal prohibitions in the structure of Soviet law // Jurisprudence. L., Pub. House of Leningrad University, 1973, № 5, p. 43-51 (In Russ.); **Bratko A. G.** Prohibitions in Soviet law: questions of theory. Abstract of Candidate of Juridical Sciences Thesis, Saratov, 1979, p.10; (In Russ.);

⁵**Dubinina E.N. Rodionova E.V.** Legal responsibility as a type of social responsibility: modern problems// Abstract journal. Moscow, Moscow. University of the Ministry of Internal Affairs of Russia, 2012, № 16, p.66-69 (In Russ.); **Malein N.S.** Modern problems of legal responsibility // The State and Law. Moscow, Nauka, 1994, №. 6. p. 23-32 (In Russ.).

⁶ **Qocharyan H., Muradyan M.** Holders of Fundamental Rights and Freedoms (a Theoretical Analysis)// European University. Collection Of Scientific Articles. Yerevan. 2019, p.172-186.

unchanging minimum threshold of morality in society, as well as the boundaries of what is permissible and prohibited in the behavior of citizens and the actions of state bodies⁷.

In modern legal literature, prohibitions are classified into indirect and direct types. Such classification of legal prohibitions is important, since it fully reveals the essence of the legal prohibition, its social and practical significance.

1. **Indirect prohibition**, in a broad sense, performs a preventive function. However, an indirect prohibition is reflected and resolved in a legal norm. This function is not the main one, but acts as an auxiliary *function of permissive and prescriptive norms*. It should be noted that the idea of state compensation for damage caused by illegal actions (or inaction) of state authorities or their officials, established by law, appears in the form of a permissive norm. It should be noted that the idea of compensation by the state for damage caused by illegal actions (or inaction) of state authorities or their officials, established by law, appears in the form of a permissive norm. At the same time, the concept of “right to compensation for damage” implies an indirect prohibition that does not allow illegal actions (or inaction) of state bodies and their officials. This provision is more clearly enshrined in the title of Article 62 of the Constitution of the Republic of Armenia: “The Right to Compensation for Damage”, In addition, it is defined in Part 1 of the same article, which states: “Everyone shall have the right to compensation for damage inflicted through a non-legitimate action or inaction of state and local self-government bodies and officials, whereas in the cases prescribed by law - also the right to compensation for damage inflicted through legitimate administration. The conditions and procedure for compensation for damage shall be prescribed by law”⁸. Another example: according to Article 60 of the Constitution of the Republic of Armenia: “Everyone shall be obliged to pay taxes and duties prescribed *in accordance with law* and make other mandatory payments to the state or community budget”⁹. It is obvious that in this case we are dealing with a norm containing two legal prohibitions. The first concerns state bodies, preventing them from collecting illegally imposed taxes and duties, and the second prohibits individuals and legal entities from evading the relevant payments.

An indirect prohibition can act as a substantive element of a positive obligation, but not the content of a legal norm. According to some authors, it is necessary to distinguish between indirect prohibitions as elements of the content of positive civil obligations, and prohibitions as an

⁷ Alekseev S.S. General permissions and general prohibitions in Soviet Law. Moscow, Jurid. lit., 1989. p.25-28(In Russ.); Ioffe O.S. Legal norms and human actions //Current issues of Soviet Civil Law. M., Jurid. lit., 1964, Issue 36, p. 10-51(In Russ.); Grounds for a criminal law ban. Criminalization and decriminalization/ Ed. Kudryavtsev V.N., Yakovlev A.M. M., Nauka, 1982. p.12-15(In Russ.):

⁸ The Constitution of the Republic of Armenia (adopted on 05 Jul. 1995, with amendments approved on 06 Dec. 2015) URL: <https://www.president.am/ru/constitution-2015/> (last visited Dec. 22, 2024).

⁹ Ibid, Article 60.

independent means of consolidating passive-type obligations, as an independent form of civil regulation of public relations¹⁰.

2. Considering and emphasizing the preventive function of indirect prohibitions in the context of limiting state power, it should be noted, that they play a key role only when the prohibition is embodied in an independent legal norm. And in this case, **direct prohibitions** arise. A vivid example of a direct prohibition is the norm enshrined in Article 162 of the Constitution of the Republic of Armenia: “Any interference with the administration of justice is prohibited”¹¹ or the prohibition enshrined in Article 163: “Establishment of extraordinary courts shall be prohibited”¹². A similar functional prohibition is also enshrined in Article 95 of the Constitution of the Republic of Armenia, according to which a Deputy shall not hold an office in other state bodies or local self-government bodies if not conditioned by his status, shall not hold any office in commercial organizations, shall not be engaged in entrepreneurial activity, perform other paid work, except for scientific, educational and creative work¹³.

In turn, Article 2 of the RA Law “On Guarantees Of The Activities Of A Deputy Of The National Assembly Of The Republic Of Armenia” obliges the Deputy, within one month after receiving the mandate, to be released from the above-mentioned paid work, with the exception of scientific, educational or creative work, and to completely entrust its share in their statutory capital to trust management¹⁴.

Based on the nature and scope of legal information, all prohibitions can be divided into two large groups. The first will include those prohibitions that contain generalized information about impermissible or illegal behavior and can be called *informative*. The second group includes prohibitions that, for convenience, can be called *elementary* and the majority of which are in the domain of criminal law, for example: theft, murder, robbery, etc. The peculiarity of these prohibitions is that, as a rule, they are not directly formulated in the articles of normative acts, but are implied. Thus, if we present these norms in the form of direct prohibitions, then the latter will have the following formulations: “it is prohibited to kill a person”, “it is prohibited to form a gang”, or “it is prohibited to appear for work in a state of intoxication”, etc.

The conducted studies indicate, that imperative formulations of prohibitions in normative legal acts are necessary in cases, where there is a compulsory of the legal consciousness of society

¹⁰ **Em V.S.** The category of duties in Soviet civil law (questions of theory). Candidate of Juridical Sciences Thesis. M., 1981, p. 41-42 (In Russ.).

¹¹ The Constitution of the Republic of Armenia (adopted on 05 Jul. 1995, with amendments approved on 06 Dec. 2015) URL: <https://www.president.am/ru/constitution-2015/> (last visited Dec. 22, 2024).

¹² Ibid, Article 163.

¹³ Ibid, Article 95.

¹⁴ The Law of the Republic of Armenia “On Guarantees Of The Activities Of A Deputy Of The National Assembly Of The Republic Of Armenia” URL: <http://www.parliament.am/legislation.php?sel=show&ID=5707&lang=eng> (last visited Dec.23,2024).

regarding the inadmissibility of specific actions. For example, according to Article 46 of the Constitution of the Republic of Armenia: “Political parties advocating violent overthrow of the constitutional order or using violence for the purpose of overthrowing the constitutional order shall be unconstitutional and **shall be subject to prohibition upon the decision of the Constitutional Court**”¹⁵. A stricter approach is enshrined in Article 5 of the Constitution of the Republic of Kazakhstan, according to which the establishment and activity of public associations whose aims or actions are aimed at violent change of the constitutional system, violation of the integrity of the Republic, undermining the security of the state, incitement to social, racial, national, religious, class and tribal enmity, as well as the establishment of paramilitary units not provided for by law, shall be prohibited¹⁶. It should be noted, that *legal prohibitions have various classifications in the legal literature*. Thus, depending to their legal force, prohibitions are classified into prohibitions established by laws and prohibitions established by sub-legislative acts (bylaws). Depending on the range of subjects of legal relations, prohibitions are divided into prohibitions concerning government bodies, their officials, as well as prohibitions concerning citizens. According to the scope of action in the territory, they are general and local prohibitions, and according to the time of action, they are permanent and temporary prohibitions¹⁷.

It is obvious, that *general prohibitions are specified in special prohibitions*. Thus, a vivid example of general prohibitions are the prohibitions enshrined in the Constitution of a state, which are on the primary place in the system of legal prohibitions, have the highest legal force and are specified in other branches of law, thereby distinguishing constitutional prohibitions from prohibitions enshrined in administrative, civil, criminal or other branches of law.

Moreover, **constitutional prohibitions are mandatory for all subjects** of legal relations. Thus, in accordance with Part 5 of Article 12 of the Constitution of the Republic of Kazakhstan, the exercise of human and civil rights and freedoms shall not violate the rights and freedoms of others, nor shall it violate the constitutional system and public morality¹⁸. It is obvious that we are dealing with a general (universal) prohibition, which, in one way or another, is stated in all legal norms.

It is known, that the majority of constitutions of democratic legal states do not contain sanctions. However, A. A. Kondrashov and Yu. A. Radomsky analyzing the peculiarities of the

¹⁵ The Constitution of the Republic of Armenia (adopted on 05 Jul. 1995, with amendments approved on 06 Dec. 2015) URL: <https://www.president.am/ru/constitution-2015/> (last visited Dec. 22, 2024).

¹⁶The Constitution of the Republic of Kazakhstan (adopted on 30 May.1995, with amendments approved on 16 Sep.2022);URL: <https://www.akorda.kz/en/constitution-of-the-republic-of-kazakhstan-50912> (last visited Dec. 25, 2024).

¹⁷ **Edkova T.A.** Discussion of the doctrine of prohibitions in administrative law // Journal of Russian Law. 2013, № 8,p. 137-144(In Russ.); **Tolmachev V. V.** Species diversity of legal prohibitions and criteria for their scientific classification // Legal policy and legal life. 2014. №3,p.121-125(In Russ.).

¹⁸The Constitution of the Republic of Kazakhstan (adopted on 30 May.1995, with amendments approved on 16 Sep.2022); URL: <https://www.akorda.kz/en/constitution-of-the-republic-of-kazakhstan-50912> (last visited Dec. 25, 2024).

institute of constitutional prohibitions, have revealed that in some cases, constitutions are endowed with a unique sanction, which first of all expresses a negative political assessment of a given act¹⁹. For instance, according to Article of the Constitution of the Russian Federation: “The President of the Russian Federation shall have the right to suspend acts of the bodies of executive power of the constituent entities of the Russian Federation if these acts contradict the Constitution of the Russian Federation and the federal laws or international commitments of the Russian Federation or violate the rights and freedoms of man and citizen until the issue is solved by a corresponding court”²⁰. *However, in our opinion, the approach of jurists is too narrow and does not correspond to the current evolving legal thought and regulations.*

As for indirect prohibitions, current legislative reforms require that indirect prohibitions enshrined in constitutional norms be secured by sanctions enshrined in other branches of law. For instance, according to Article 36 of the Constitution of RA, parents shall have the right and **obligation** to take care of the upbringing, education, health, comprehensive and harmonious development of their children²¹.

*The negative consequences of failure to comply with this norm are enshrined in Article 59 of the Family Code of the Republic of Armenia, according to which: “In order to ensure the vital interests of the child, parents or one of them may be deprived of parental rights if they maliciously avoid fulfilling parental duties, including paying alimony, for one year in a row...”*²².

*We agree with the opinion of legal experts that, considering legal prohibitions as a state-imperative requirement to refrain from certain actions, one should take into account the fact that the degree of imperativeness of different legal prohibitions is not the same. In this regard, all legal prohibitions can be classified into **absolute and relative prohibitions**²³. Thus, absolute legal prohibitions completely prohibit any type of behavior, without any exceptions. For example, the prohibition of torture, inhuman or degrading treatment or punishment enshrined in the Constitution of the Republic of Armenia²⁴.*

¹⁹ **Kondrashev A.A.** Institute of Constitutional and Legal Responsibility in the Subject of Constitutional Law: Correlation Issues// Actual Problems of Russian Law. 2018, №10, p.184-195 (In Russ.); **Radomsky Yu.A.** Institute of constitutional and legal responsibility: definitive gap and prospects of practical applicability // Scientific notes of V. I. Vernadsky Crimean federal university. Juridical science. 2023. V. 9 (75). № 2, p. 172–182.(In Russ.);

²⁰ The Constitution of Russian Federation (adapted on 12 Dec. 1993, with the amendments approved by nation-wide voting on 1 July 2020), URL: <https://constitution.garant.ru/english/> (last visited on Dec.25, 2024).

²¹ The Constitution of the Republic of Armenia (adopted on 05 Jul. 1995, with amendments approved on 06 Dec. 2015) URL: <https://www.president.am/ru/constitution-2015/> (last visited Dec. 22, 2024).

²² The Family Code of the Republic of Armenia (adopted on 09 Nov. 2004) <https://goo.su/w69EuzA> (last visited Dec. 22, 2024).

²³ **Malko, A.V.** Prohibitions as a means of legal policy // Bulletin of the Samara Humanitarian Academy.Ser.: Right. Issue 1. 2012. p. 3-11(In Russ.); **Tolmachev V. V.** Species diversity of legal prohibitions and criteria for their scientific classification // Legal policy and legal life. 2014. №3,p.121-125(In Russ.).

²⁴ The Constitution of the Republic of Armenia (adopted on 05 Jul. 1995, with amendments approved on 06 Dec. 2015) URL: <https://www.president.am/ru/constitution-2015/> (last visited Dec. 22, 2024).

At first glance, it seems that absolute prohibitions entail the most serious responsibility. However, this is not always the case, since absolute prohibitions exist in all branches of law, and not in all cases violation of an absolute prohibition is punished more severely, than in situations involving violation of relative prohibitions. For example, when we consider “taking someone’s life”, which is an absolute prohibition for society, nevertheless, that action not in all cases is considered a crime and punishable act. Thus, murder is defined by the Criminal Code of the Republic of Armenia as the unlawful deprivation of another person’s life²⁵. However, when we consider the institution of necessary defense, in this case, taking person’s life is a manifestation of the natural right to self-defense²⁶. Therefore, in this case, there is a *relative prohibition*, that is, prohibiting a certain, but not in all cases.

A relative prohibition does not apply in the event of the occurrence of the circumstances specified in the hypothesis of the legal norm. In the above example, such a circumstance is necessary defense. The conditions to which the law links the implementation of the prohibition, are legal facts in the broad sense: time, space, circle of persons. For example, in accordance with Article 48 of the Constitution of the Republic of Armenia: “Everyone who has attained the age of twenty-five, has held citizenship of only the Republic of Armenia for the preceding four years, has been permanently residing in the Republic for the preceding four years, has the right of suffrage and has command of the Armenian language, may be elected as a Deputy of the National Assembly”²⁷.

Therefore, in the above-mentioned example, the relative prohibition enshrined in the hypothesis of a constitutional norm includes restrictions that are applicable only to a candidate for deputy of the National Assembly of the Republic of Armenia.

At the same time, many authors in the legal literature, considering relative prohibitions, pay attention to the analysis of the disposition of the norm in terms of its structural arrangement. This allows us to conclude that it often contains two conditions: main and secondary²⁸. Thus, the main condition includes a prohibition, and the secondary condition includes permission. For example, Article 32 of the Constitution of the Republic of Armenia stipulates that everyone shall have the right to inviolability of the apartment. However, the same article also mentions exceptions within which this right may be limited. Thus, a home may be searched only upon a court decision, in the

²⁵ The Criminal code of The Republic of Armenia (adapted on 05 May 2021), Art.155, URL:<https://707.su/a9VO> (last visited Dec. 25, 2024).

²⁶ Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention), (adapted on 04.Nov.1950, as amended by Protocols Nos. 11,14,15 and16),Art.2, URL: <https://goo.su/r8nBr> (last visited on Dec. 24, 2024).

²⁷ The Constitution of the Republic of Armenia (adopted on 05 Jul. 1995, with amendments approved on 06 Dec. 2015) URL: <https://www.president.am/ru/constitution-2015/> (last visited Dec. 22, 2024).

²⁸ **Malko, A.V.** Prohibitions as a means of legal policy // Bulletin of the Samara Humanitarian Academy.Ser.: Right. Issue 1. 2012. p. 3-11(In Russ.); **Tolmachev V. V.** Species diversity of legal prohibitions and criteria for their scientific classification // Legal policy and legal life. 2014. №3,p.121-125(In Russ.).

cases and under the procedure prescribed by law. Other cases of restricting the right to inviolability of the home upon court decision may be prescribed by law²⁹.

The same may also be considered in the context of the right to physical and mental integrity, when this right may be restricted only by law, for the purpose of state security, preventing or disclosing crimes, protecting public order, health and morals or the basic rights and freedoms of others³⁰. It is obvious that the main rule in one case is the inviolability of the apartment, and in the other case, physical and mental inviolability, which are prohibited from being violated. The *secondary or derivative* rule includes permission to interfere, to limit the above-mentioned absolute rights, but only under certain specific conditions: a court decision, the purpose of preventing or detecting crimes, etc.

It should be noted that the legal literature continues to be dominated by the position, that within the framework of a democratic, liberal form of the state, the state power is mainly limited by human rights and freedoms. Moreover, studying the features of legal measures that delimit the boundaries of individual rights and freedoms, we almost always come to legal prohibitions, since thanks to them, in one case, a ban is established for the individual to violate the specified boundaries, and in the other case, a ban on the state to interfere in the sphere of the subjective rights and freedoms of the individual³¹.

Moreover, when studying the specifics of legal measures that restrict the boundaries of human rights and freedoms, we almost always come to legal prohibitions, since they, in one case, prohibit individuals from violating these boundaries, and in another case, prohibit government interference in the sphere of subjective human rights and freedoms.

Nevertheless, it is with the help of legal prohibitions that, on the one hand, the impossibility of violating the specified boundaries by an individual is achieved, and on the other hand, legal prohibitions limit the possibilities of intervention by the state in the sphere of subjective rights and freedoms.

²⁹ The Constitution of the Republic of Armenia (adopted on 05 Jul. 1995, with amendments approved on 06 Dec. 2015), Art. 63, URL: <https://www.president.am/ru/constitution-2015/> (last visited Dec. 22, 2024).

³⁰ Ibid. Article. 25.

³¹ **Bratersky M. V.** Introduction. The Future of democracy: Liberal and neoliberal models in the modern world // APE. 2023, №1 (117), p. 7-17(In Russ.); **Stephen M.D.** States, norms and power: emerging powers and global order // Millennium journal of international studies. – Thousand Oaks, CA: SAGE Publishing. 2014. Vol. 42, Issue 3, p. 888–896

ЗАПРЕТЫ КАК СОВРЕМЕННОЕ СРЕДСТВО ПРАВОВОГО ОГРАНИЧЕНИЯ ГОСУДАРСТВЕННОЙ ВЛАСТИ

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Проблема ограничения государственной власти является одной из актуальных исследований современной юриспруденции. В частности, современные юристы рассматривают запреты в качестве особого юридического механизма ограничения государственной власти. В статье так же представлена сущность концепции «правовое ограничение». Более того, на основании изучения мнений известных правоведов, международного и отечественного законодательства, представлены виды правовых запретов. В частности, в статье автор всецело раскрывает характерные особенности прямых и косвенных запретов, которые оказывают особое влияние на правоотношения, существующие в государстве. Наряду с этим, в данной статье автор особо подчеркивает роль запретов в контексте взаимоотношений государства и личности.

Ключевые слова: прямые и косвенные запреты, конституционные запреты, акты, ограничение государственной власти, государство, личность, Конституция, права и свободы.

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